

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
STATESBORO DIVISION**

KEVIN TYRONE SAUNDERS,	)	
	)	
Movant,	)	
	)	
v.	)	CV616-072
	)	CR609-042
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	
	)	

**REPORT AND RECOMMENDATION**

Petitioner Kevin Saunders, proceeding *pro se*, moved under 28 U.S.C. § 2255 to vacate the Armed Career Criminal Act (ACCA) enhancement applied to his 2010 sentence for possession of a firearm by a convicted felon. His motion was denied, and the Court declined to issue a Certificate of Appealability. Docs. 78 (report and recommendation denying motion), *adopted*, docs. 82 & 83. Saunders appealed anyway, docs. 84, 86-90, and he has asked this Court for permission to proceed with his appeal *in forma pauperis*. Doc. 88.

An appeal cannot be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); *see* Fed. R. App. P. 24(a)(3) (trial court may certify that

appeal of party proceeding *in forma pauperis* is not taken in good faith “before or after the notice of appeal is filed”). A party does not proceed in good faith when he seeks to advance a frivolous claim or argument. *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Neitzke v. Williams*, 490 U.S. 319, 327 (1989) (a claim or argument is frivolous when it appears the factual allegations are clearly baseless or the legal theories are indisputably meritless); *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (an *in forma pauperis* action is frivolous and, thus, not brought in good faith, if it is “without arguable merit either in law or fact”).

The Court reiterates its prior ruling on the merits in advising that Saunders’ § 2255 motion should be denied and no Certificate of Appealability should be issued. *See* Doc. 78. Movant’s arguments that that he no longer qualifies as an Armed Career Offender after *Johnson v. United States*, 576 U.S. \_\_\_, 135 S. Ct. 2551 (2015) have been considered and denied. Docs. 78, 82, 83. There are no non-frivolous issues to raise on appeal, and an appeal would not be taken in good faith. 28 U.S.C. § 1915(a)(3). *See Neitzke*, 490 U.S. at 327; *Napier*, 314 F.3d at 531.

Thus, the Court should DENY movant's application for *in forma pauperis* status on appeal.

**SO REPORTED AND RECOMMENDED**, this 20th day of January, 2017.

  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA